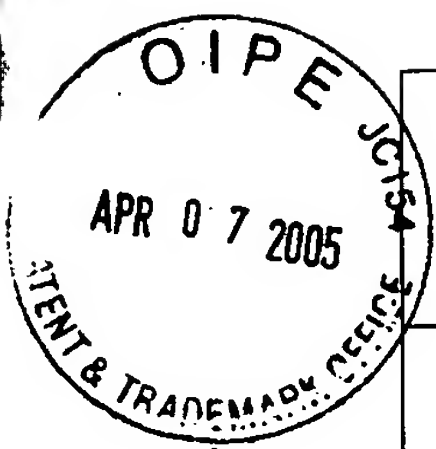


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37 CFR 1.10 - SEPARATE PAPER

ATTORNEY'S DOCKET NO.

030738

IN RE APPLICATION OF:

Lhing-Yew Li, et al.

Serial No.:

10/067,974

Filing Date:

February 8, 2002

Title:

Polynucleotide Constructs Encoding Aspartate Kinase, Aspartate-Semialdehyde Dehydrogenase, and Dihydrodipicolinate Reductase and Related Constructs, Products, and Methods

Group Art Unit

1652

Examiner

Kathleen M. Kerr

Express Mail mailing label number: EV 662115565 US

Date of Deposit: April 7, 2005

I hereby certify that this paper or fee is being deposited with the
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to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-
1450.

Ellie Pingree

(Typed or printed name of person mailing paper or fee)

(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lhing-Yew Li, et al.

Serial No.: 10/067,974

Filed: February 8, 2002

PATENT APPLICATION

POLYNUCLEOTIDE CONSTRUCTS
ENCODING ASPARTATE KINASE,
ASPARTATE-SEMIALDEHYDE
DEHYDROGENASE, AND
DIHYDRODIPICOLINATE REDUCTASE
AND RELATED CONSTRUCTS, PRODUCTS,
AND METHODS

Group Art Unit: 1652

Examiner: Kerr, Kathleen M.

Pittsburgh, Pennsylvania 15219
April 7, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION FOR RIGHT OF PRIORITY UNDER 35 U.S.C. §119(e),
35 U.S.C. §120, and 37 C.F.R. 1.78(a)(2)**

Sir:

This is a petition to request the benefit of priority of an earlier filed application in connection with the above-captioned Application. This petition is filed under 37 C.F.R. 1.78(a)(3). The reference identifying the claim to the prior filed applications by serial numbers and filing dates and the date that the present case was filed was unintentionally delayed. A statement of unintentional delay in filing the priority claim and an authorization to charge to Deposit Account No. 02-4553 the required surcharge as set forth under 37 C.F.R. 1.17(t) are included herewith.

Remarks begin on page 3 of this paper.

Conclusion begins on page 5 of this paper.

Authorization begins on page 6 of this paper.

Appendix A, Supplemental Application Data Sheet begins on page 7 of this paper

REMARKS

Applicants respectfully make a request for the benefit of priority to an earlier filed co-pending case under 35 U.S.C. §119(e) and §120 and as set forth in 37 C.F.R. 1.78(a)(2), claiming the benefit of priority to the co-pending case U.S. Serial No. 09/722,441 (now allowed) filed on November 28, 2000, naming Paul D. Hanke, Lhing-Yew Li-D'Elia, and Holly J. Walsh as inventors. This claim for the benefit of priority is unintentionally delayed and this petition requesting said benefit of priority is accompanied by a surcharge for unintentionally delayed benefit of priority of an earlier filed case as set forth under 37 C.F.R. 1.17(t).

The earlier filed co-pending U.S. Serial No. 09/722,441 and the present application have one common inventor Lhing-Yew Li (formerly Lhing-Yew Li-D'Elia as listed in U.S. Serial No. 09/722,441 who is one and the same individual as Lhing-Yew Li listed as inventor on the present application). Said U.S. Serial No. 09/722,441 claims the benefit of priority to U.S. Provisional Application No. 60/184,130 filed on February 22, 2000 and to U.S. Provisional Application No. 60/173,707 filed on December 30, 1999. Applicants gratefully acknowledge the notice of allowability of U.S. Serial No. 09/722,441 mailed on February 9, 2005 and note for the record that the issue fee has not yet been paid as of the filing of this paper on April 7, 2005. The issue fee is due on or before May 9, 2005. U.S. Serial No. 09/722,441 is co-pending and Applicants respectfully request the benefit of priority thereto.

The present case was filed as a Request for Continued Examination (RCE) on December 7, 2004 and the deadline to claim priority to the earlier filed U.S. Serial No. 09/722,441 was four months from the filing of the parent case of the RCE. The parent case of the present RCE case was filed February 8, 2002. Thus the period for timely filing a petition for priority to the earlier

filed U.S. Serial No. 09/722,441 expired on June 8, 2002. The delay in filing this petition for benefit of priority under 37 C.F.R. 1.78(a)(2) from February 8, 2002 to the present was unintentional and Applicants respectfully request granting of the benefit of priority to the following earlier applications: U.S. Serial No. 09/722,441, filed November 28, 2000, which is a utility application claiming the benefit of priority to U.S. Provisional Patent Application Nos. 60/184,130 filed February 22, 2000, and 60/173,707 filed December 30, 1999.

Applicants enclose a Supplemental Application Data Sheet which sets forth the above-noted requested claim of the benefit of priority.

CONCLUSION

Applicants respectfully submit the instant petition for the benefit of an earlier filed priority to U.S. Serial No. 09/722,441. Applicants reserve the right to withdraw this petition for benefit of priority during the course of prosecution of the present application.

AUTHORIZATION

A check in the amount of \$1,370.00 is enclosed for the fee associated with this Petition. The Commissioner is hereby authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 02-4553. A duplicate copy of this Petition for Benefit of Priority is enclosed for deposit account purposes.

Respectfully submitted,

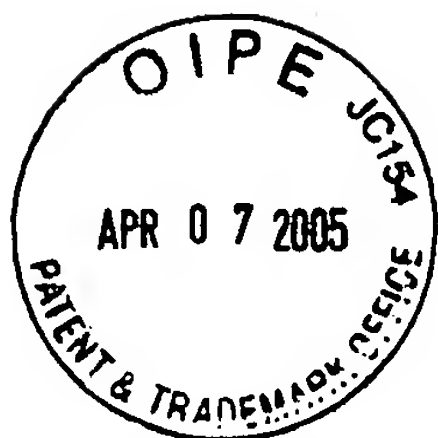
Buchanan Ingersoll PC

A handwritten signature in black ink, appearing to read "Craig G. Cochenour", with a long horizontal flourish extending to the right.

Dated: April 7, 2005

Craig G. Cochenour
Registration No. 33,666
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219
Telephone: 412-562-3978

Appendix A



SUPPLEMENTAL APPLICATION DATA SHEET

Applicant Information

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Application Information

Application Type:: Regular
Subject Matter:: Utility
Title Line One:: Polynucleotide Constructs Encoding
Title Line Two:: Aspartate Kinase, Aspartate-Semialdehyde
Title Line Three:: Dehydrogenase, and Dihydrodipicolinate
Title Line Four:: Reductase and Related Constructs, Products
Title Line Five:: and Methods

Supplemental 10067974 02/08/2002 04/07/2005

Docket Number::	030738
Request for Early Publication?::	No
Request for Non-Publication?::	No
Total Drawing Sheets::	21
Suggested Dwg. Figure for Pub.::	11B

Representative Information

Registration Number One::	26,717
Registration Number Two::	29,362
Registration Number Three::	32,216
Registration Number Four::	33,666
Registration Number Five::	36,958
Registration Number Six::	38,478
Registration Number Seven::	40,751
Registration Number Eight::	40,938
Registration Number Nine::	54,468
Registration Number Ten::	48,837

Domestic Priority Information

This application is an::	Application claiming the benefit under 35USC 119(e) of
Application One::	60/267,183
Filing Date::	February 8, 2001
	and claiming the benefit under 35USC120 of
Application Two::	09/722,441
Filing Date::	November 28, 2000
	which claims the benefit under 35USC119(e) of
Application Three::	60/184,130
Filing Date::	February 22, 2000
	and
Application Four::	60/173,207
Filing Date::	December 30, 1999